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12 SMTC CORPORATION

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15

16 SMTC Corporation, a Delaware
17 corporation,

18 Plaintiff,

19 v.

20 APT ELECTRONICS, a California
21 corporation,

22 Defendant.

Case No. 8:23-cv-672

COMPLAINT FOR

- 23 (1) **BREACH OF WRITTEN**
- 24 **CONTRACT;**
- 25 (2) **QUANTUM MERUIT;**
- 26 (3) **GOODS SOLD AND**
- 27 **DELIVERED;**
- 28 (4) **OPEN BOOK ACCOUNT;**
- AND**
- (5) ACCOUNT STATED**

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds
\$75,000]

29 Plaintiff SMTC Corporation (hereafter, "Plaintiff" or "SMTC") for its
30 Complaint against Defendant APT Electronics (hereafter, "Defendant" or "APT")
alleges as follows:

THE PARTIES

1. Plaintiff is a Delaware corporation with its principal place of business
located in Melbourne, Florida. Founded in 1985, Plaintiff is a mid-size provider of
end-to-end electronics manufacturing services ("EMS"), including product design and

1 engineering services, printed circuit board assembly, production, enclosure, cable
2 assembly, precision metal fabrication, systems integration and comprehensive testing
3 services, configuration to order, build to order and direct order fulfillment. Plaintiff's
4 wide array of services extend over the entire electronic product life cycle from the
5 development and introduction of new products through to the growth, maturity and
6 end-of-life product phases. Plaintiff has facilities in the United States, Canada,
7 Mexico and China.

8 2. Plaintiff is informed and believes, and based thereon alleges, that
9 Defendant is a California corporation with its principal place of business located in
10 Anaheim, California. Plaintiff is informed and believes, and based thereon alleges,
11 that Defendant is an electronics contract manufacturer that markets itself as
12 specializing in surface mount, thru-hole and final box build assembly, with an
13 integrated MRP system supporting the management of turnkey and customer
14 consigned materials.

15 **JURISDICTION AND VENUE**

16 3. Although this action involves a claim for breach of contract and common
17 counts under California law, this Court nevertheless has subject matter jurisdiction
18 over this action pursuant to 28 U.S.C. Section 1332(a)(2) in that there is complete
19 diversity of citizenship between the parties and the amount in controversy is in excess
20 of \$75,000, exclusive of interest and costs. As alleged hereinabove, this action
21 involves a controversy between Plaintiff, which is a Delaware corporation with its
22 principal place of business located in Melbourne, Florida, and Defendant, which is a
23 California corporation with its principle place of business located in Anaheim,
24 California.

25 4. This Court has personal jurisdiction over the Defendant because
26 Defendant is incorporated in this state and maintains its principal place of business in
27 this judicial district. Further, the claims asserted herein arose from Defendant's
28 activities in this state and judicial district.

1 5. Venue is proper, *inter alia*, pursuant to 28 U.S.C. §§ 1391 in this case
2 because, on information and belief, Defendant maintains its principle place of business
3 in this judicial district and a substantial part of the acts, events, or omissions giving
4 rise to the claims asserted herein occurred in this judicial district.

5 **GENERAL ALLEGATIONS**

6 ***Background***

7 6. On or about December 18, 2018, Plaintiff and Defendant entered into a
8 written agreement called the Contract Manufacturing Services Agreement (the
9 “MSA”). A true and correct copy of the MSA is attached hereto as Exhibit 1 and is
10 incorporated herein by this reference as though set forth in full.

11 7. Pursuant to the MSA Defendant agreed to purchase and Plaintiff agreed
12 to provide certain services and materials in connection with the manufacture of certain
13 products Defendant deemed necessary to support the requirements of its end customer,
14 Inogen, Inc. (“Inogen”).

15 8. Based upon the parties’ prior dealings Plaintiff understood that Defendant
16 had been contracted by Inogen to manufacture and supply components for Inogen’s
17 end products.

18 9. Plaintiff is informed and believes, and based thereon alleges, that Inogen
19 is a corporation organized and existing under the laws of the state of Delaware with
20 its principal place of business located in Orange County, California. Plaintiff is further
21 informed and believes, and based thereon alleges, that Inogen is engaged in the
22 business of developing and marketing portable oxygen concentrators for use by
23 individuals suffering from certain chronic respiratory conditions who need
24 supplemental oxygen to deal with their health conditions.

25 10. Plaintiff is informed and believes, and based thereon alleges, that prior to
26 entering into the MSA with Plaintiff, Defendant entered into a Contract Manufacturing
27 Services Agreement with Inogen pursuant to which Defendant agreed to provide to
28 Inogen services and materials in connection with the manufacture of certain Inogen

1 products in consideration for which Inogen would pay Defendant.

2 11. Plaintiff is informed and believes, and based thereon alleges, that
3 Defendant has commenced an action against Inogen claiming that Inogen owes
4 Defendant in excess of \$3,329,445.53 under the terms of the Contract Manufacturing
5 Services Agreement between Defendant and Inogen. (see, *APT Electronics, Inc. v.*
6 *Inogen, Inc.*, Orange County Superior Court, Case No. 30-2023-01311329-CU-BC-
7 WJC.)

8 ***The MSA Between Plaintiff and Defendant Sets Up a Preferred Supplier Resource***
9 ***for Defendant to Aid Defendant in Meeting its Obligations to Inogen***

10 12. Under the terms of the MSA, Defendant contracted with Plaintiff to have
11 Plaintiff perform manufacturing services on Defendant's behalf in connection with
12 Defendant's performance of its contractual obligations to Inogen. More specifically,
13 Defendant agreed to designate Plaintiff as a preferred supplier and to purchase a
14 percentage of Defendant's/Inogen's requirements for the Products and Services listed
15 in Appendix A to the MSA. (Ex. 1, § 2.3).

16 13. More specifically, Defendant agreed that "[d]uring each of the first 2.5
17 years of the term of this Agreement, [Defendant] shall purchase per quoted contract
18 quantities [its] (and its 'Affiliates') requirements for Products and Services . . . from
19 [Plaintiff] (the "Minimum Requirements") based on price, quality, and delivery
20 performance." (Ex. 1, § 15.10)

21 14. The term "Products" is defined in the MSA to mean "APT Electronics's
22 products manufactured by SMTC hereunder." (Ex. 1, §1.26)

23 15. The term "Services" is defined in the MSA to mean "the provision by
24 SMTC of all required parts, components and other materials as listed in the Bill of
25 Material together with all assembly services *[sic]* including but not limited to board
26 level assembly, in-circuit and functional testing, packaging and/or shipping of finished
27 Product." (Ex. 1, § 1.29)

28 16. Under the terms of the MSA, Defendant would on a quarterly basis

1 provide to Plaintiff a rolling forecast of its estimated monthly requirements of Products
2 covering the ensuing 12 months of demand, or a so-called “Demand Statement” as
3 used in the MSA. (Ex. 1, § 14.1).

4 17. Defendant’s quarterly Demand Statement would include, among other
5 things, “Blanket Purchase Orders” and “Purchase Orders” authorizing Plaintiff to
6 purchase components and materials required to support Defendant’s forecast of
7 required Products as well as to fill so-called “Kanban”¹ quantities in the finished goods
8 inventory. (Ex. 1, § 14.1.1).

9 18. Plaintiff would then be entitled to use the Blanket Purchase Orders and
10 Purchase Orders and Forecasts (defined in the MSA as “a Product purchase projection
11 provided by APT and passed through its end customer Inogen”) to place orders on the
12 supply chain to cover the material lead times and Plaintiff’s manufacturing lead times.
13 (Ex. 1, § 14.2) The MSA makes plain that the Forecasts authorize Plaintiff to order
14 material in accordance with the Forecasts and that “[Defendant] *assumes liability for*
15 *such material.*” (*Id.*, emphasis added)

16 19. Defendant issued various Purchase Orders to Plaintiff calling for the
17 manufacture and delivery of specific Products, quantities and lead times. The parties
18 agreed in the MSA that once a Purchase Order was accepted, Plaintiff was “obligated
19 to manufacture and deliver to [Defendant] and [Defendant] will be firmly and
20 irrevocably obligated to buy from [Plaintiff] the Products set forth in the Purchase
21 Orders.” (Ex. 1, § 14.3)

22 20. In the MSA Defendant agreed to pay all invoiced amounts on a Net 55
23 days from date of invoice. (Ex. 1, § 15.5)

24 21. Plaintiff agreed to invoice Defendant for Equipment or Products when
25 they were shipped to Defendant and in the case of Services pursuant to the terms
26

27 ¹ The term Kanban refers to an inventory control system for improving scheduling
28 and reducing inventories used in just-in-time manufacturing and can be utilized for
more visibility into the needs for purchasing inventory from external suppliers. The
parties provided for the management of a Kanban system in Section 19.1

established by Plaintiff's quotations for Services accepted by Defendant. (Ex. 1, § 15.6)

22. Consistent with Plaintiff's status as a preferred supplier of Defendant and the overall management and implementation of a just-in-time and flexible manufacturing service for Defendant, the parties agreed to set up a program management team comprised of a program manager appointed by each company and to ensure that the parties established and conducted regular meetings to track progress, performance and actions under the relationship. Further, the parties agreed to hold quarterly business review meetings in which project teams and senior management of both companies would review the status of the relationship and any performance issues. (Ex. 1, § 25.1-4)

Defendant Fails to Pay Invoices for Products and Services

23. As contemplated by the MSA Plaintiff commenced providing Services and manufacturing Products in accordance with the Forecast, Blanket Purchase Orders and Purchase Orders issued by Defendant. For a period of time, Defendant paid Plaintiff's invoices. However, commencing in approximately late 2021, invoices began to not be paid in full as required under the express terms of the MSA in breach of Defendant's obligations to Plaintiff, including as follows:

<u>Invoice Date</u>	<u>Invoice No.</u>	<u>Amount Invoiced</u>	<u>Amount Past Due</u>
11/15/2021	10221849	\$ 25,590.00	\$ 88.80
11/18/2021	10221850	\$ 9,553.60	\$ 492.80
11/19/2021	10221851	\$ 2,559.00	\$ 132.00
11/19/2021	10221852	\$ 17,486.50	\$ 902.00
11/22/2021	10221853	\$ 15,354.00	\$ 792.00
11/23/2021	10221855	\$ 14,159.80	\$ 730.40
4/1/2022	10221979	\$ 7,768.53	\$ 7,768.53
4/1/2022	10221980	\$ 71,652.00	\$ 71,652.00
4/1/2022	10221981	\$ 343,103.00	\$ 343,103.80

1	7/1/2022	10222002	\$1,494,129.88	\$1,494,129.88
2	11/25/2022	10222020	\$ 582,303.82	\$ 582,303.82
3	12/2/2022	10222022	\$ 294,651.10	\$ 294,651.10

4 24. The foregoing invoices reflect a past due and owing amount totaling
5 \$2,796,642.08.

6 25. Despite Plaintiff's demands to Defendant to pay the foregoing amount
7 Defendant has failed and refused to pay.

8 26. Further, despite Plaintiff's demands Defendant has failed and refused to
9 pay Plaintiff the sum of \$226,602.00 for "non-cancelable, non-returnable materials or
10 NCNR" as defined in the MSA to include parts, components and other materials for
11 which suppliers, manufacturers or distributors have limited or restricted rights of
12 return, rescheduling or cancellation, the parts that cannot be returned or canceled
13 because schedule changes have exceeded allowable time limits for returning them or
14 canceling an order is not permitted because packaging has been opened or partially
15 opened. (Ex. 1, § 1.23) Pursuant to Section 16.8 of the MSA, Defendant agreed to be
16 "liable for any NCNR".

17 27. As a result, Defendant owes Plaintiff the total sum of \$3,023,244.08,
18 which sum is comprised of \$2,796,642.08 for Products and Services and \$226,602.00
19 for materials that are NCNR. Plaintiff has made repeated demands of Defendant for
20 payment of the foregoing, but Defendant has failed and refused to make payment.

21 **FIRST CLAIM FOR RELIEF**

22 **BREACH OF CONTRACT**

23 28. Plaintiff reasserts, realleges and incorporates herein by this reference as
24 though set forth in full each and every allegation set forth in Paragraphs 1 through 27
25 of this Complaint.

26 29. Plaintiff and Defendant entered into the MSA as alleged hereinabove.

27 30. Plaintiff performed all of conditions, covenants and promises required of
28 it in accordance with the terms and conditions of the MSA, including providing

1 Products and Services specified thereunder, except to the extent Plaintiff's
2 performance has otherwise been waived or excused.

3 31. Plaintiff's invoices for its work under the MSA total the sum of
4 \$3,023,244.08. Defendant breached its obligations under the MSA by, among other
5 things, failing and refusing to pay the amounts owed to Plaintiff as reflected in the
6 invoices issued by Plaintiff that remain due, owing and outstanding.

7 32. Defendant's failure to pay the amount due and owing under Plaintiff's
8 invoices constitutes a material breach of Defendant's obligations under the MSA.

9 33. Plaintiff has repeatedly made demand of Defendant to make good on its
10 promises to pay Plaintiff for the Products and Services provided to Defendant under
11 the MSA. Implicit in the MSA is a covenant of good faith and fair dealing obligating
12 Defendant to act toward Plaintiff in good faith, to deal fairly with Plaintiff and to not
13 do anything that might deprive Plaintiff of the expectations and benefits of the MSA
14 as well as to do everything that the MSA presupposes in order to accomplish its
15 purpose. As alleged hereinabove, Defendant breached its implied covenant of good
16 faith and fair dealing under the MSA.

17 34. As a direct and proximate result of Defendant's breach of contract by
18 failing and refusing to pay amounts due and owing to Plaintiff, Plaintiff has suffered
19 damages in an amount subject to proof at trial, but in an amount of at least
20 \$3,023,244.08, plus prejudgment interest.

21 **SECOND CLAIM FOR RELIEF**

22 **COMMON COUNT -- QUANTUM MERUIT**

23 35. Plaintiff reasserts, realleges and incorporates herein by this reference as
24 though set forth in full each and every allegation set forth in Paragraphs 1 through 27
25 of this Complaint.

26 36. Defendant requested that Plaintiff provide goods and manufacturing
27 services for the benefit of Defendant.

28 37. Within two years prior to filing this action, Plaintiff provided or made

1 available valuable goods and provided valuable manufacturing services to Defendant
2 pursuant to Defendant's requests.

3 38. Defendant has not paid Plaintiff for the good and manufacturing services
4 provided pursuant to Defendant's requests.

5 39. The reasonable value of the goods and manufacturing services provided
6 to Defendant by Plaintiff that remains due, owing and unpaid is at least \$3,023,244.08,
7 plus prejudgment interest.

8 **THIRD CLAIM FOR RELIEF**

9 **COMMON COUNT – GOODS SOLD AND DELIVERED**

10 40. Plaintiff reasserts, realleges and incorporates herein by this reference as
11 though set forth in full each and every allegation set forth in Paragraphs 1 through 27
12 of this Complaint.

13 41. Within the last two years, Defendant became indebted to Plaintiff for the
14 goods and manufacturing services provided to Defendant and for which Defendant
15 promised to pay Plaintiff in an amount to be proven at trial, but which is at least
16 \$3,023,244.08, plus prejudgment interest.

17 42. Despite Plaintiff's repeated demands for payment, neither the whole nor
18 any part of the sum Defendant owes to Plaintiff pursuant to goods and services sold
19 and delivered to Defendant has been paid and there is now due, owing and unpaid a
20 sum to be proven at trial, but which is at least \$3,023,244.08, plus prejudgment
21 interest.

22 **FOURTH CLAIM FOR RELIEF**

23 **COMMON COUNT – OPEN BOOK ACCOUNT**

24 43. Plaintiff reasserts, realleges and incorporates herein by this reference as
25 though set forth in full each and every allegation set forth in Paragraphs 1 through 27
26 of this Complaint.

27 44. Pursuant to the MSA, Plaintiff and Defendant engaged in a series of
28 business transactions whereby Plaintiff provided or made available to Defendant

1 valuable goods and manufacturing services and Defendant was supposed to pay
2 Plaintiff for the value of those goods and manufacturing services.

3 45. Plaintiff kept an account of the debits (amounts incurred by Defendant
4 for goods and manufacturing services Plaintiff provided) and credits (payments made
5 by Defendant) related to the transactions between them.

6 46. Within the last two years, Defendant became indebted to Plaintiff on an
7 open book account stated in writing for money due in an amount to be proven at trial
8 but which is at least \$3,023,244.08 for goods supplied and manufacturing services
9 provided at Defendant's request and for which Defendant agreed it was indebted to
10 Plaintiff.

11 47. Despite Plaintiff's repeated demands for payment, neither the whole nor
12 any part of the sum Defendant owes to Plaintiff pursuant to this open book account
13 has been paid and there is now due, owing and unpaid a sum to be proven at trial, but
14 which is at least \$3,023,244.08, plus prejudgment interest.

15 **FIFTH CLAIM FOR RELIEF**

16 **COMMON COUNT – ACCOUNT STATED**

17 48. Plaintiff reasserts, realleges and incorporates herein by this reference as
18 though set forth in full each and every allegation set forth in Paragraphs 1 through 27
19 of this Complaint.

20 49. Pursuant to the MSA, Plaintiff and Defendant engaged in a series of
21 transactions whereby Plaintiff provided or made available valuable goods and
22 manufacturing services to Defendant and Defendant was supposed to pay Plaintiff for
23 the value of those goods and manufacturing services.

24 50. Plaintiff kept an account of the debits (amounts incurred by Defendant
25 for goods and manufacturing services Plaintiff provided) and credits (payments made
26 by Defendant) related to the transactions between them.

27 51. Defendant, through its words and conduct, including issuing forecasts
28 and purchase orders and accepting the goods and manufacturing services provided by

1 Plaintiff as well as Plaintiff's invoices without objection, agreed that it owes and
2 promised to pay the sum of \$3,023,244.08 to Plaintiff.

3 52. Despite Plaintiff's demand for payment, Defendant has failed and refused
4 to pay the amount owed to Plaintiff under this account. To date, Defendant owes
5 Plaintiff the sum of at least \$3,023,244.08 for goods and manufacturing services
6 provided, plus prejudgment interest.

7 **SIXTH CLAIM FOR RELIEF**

8 **B&P CODE SECTION 17200 – UNFAIR COMPETITION**

9 53. Plaintiff reasserts, realleges and incorporates herein by this reference as
10 though set forth in full each and every allegation set forth in Paragraphs 1 through 27
11 of this Complaint.

12 54. Defendant's conduct as alleged above – specifically its breach of contract
13 and refusal to pay Plaintiff for the goods and services that Plaintiff provided and that
14 Defendant agreed to pay for – constitutes unfair competition.

15 55. As a direct and proximate result of Defendant's conduct, Plaintiff has
16 suffered an injury in fact because Plaintiff has provided at least \$3,023,244.08 worth
17 of goods and services to Defendant for which it has not been paid.

18 56. The harm caused by Defendant's conduct is greater than the utility of its
19 conduct.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays that this Court enter judgment in its favor and
22 against Defendant as follows:

- 23 A. For compensatory damages in an amount to be established according to
24 proof at trial, but in the amount of at least \$3,023,244.08;
- 25 B. For restitution in an amount to be established according to proof at trial;
- 26 C. For prejudgment interest at the maximum extent allowed by law;
- 27 D. For attorney's fees to the extent permitted by law;
- 28 E. For costs of suit incurred herein; and

1 F. For such other and further relief as the Court may deem just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff SMTC Corporation
4 hereby demands a jury trial for all issues so triable.
5
6

7 DATED: April 19, 2022

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

9
10 By: /s/ J. Christopher Jaczko

J. Christopher Jaczko
Jacob K. Poorman

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12 Attorneys for Plaintiff
SMTC CORPORATION
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